IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.49274-M of 2005

Date of Decision: February 26, 2007

Randhir Singh

...Petitioner

VERSUS

Wazir Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Suvineet Sharma, Advocate,
for the petitioner.

Mr.Jitender Dhanda, Advocate,
for the respondent.

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RANJIT SINGH, J.

Petitioner claims that he cannot be prosecuted for something what he has done in his capacity as a public servant, without obtaining proper sanction as envisaged under Section 197 Cr.P.C. The petitioner, who is now an Assistant Sub Inspector, has filed this petition for quashing of the complaint dated 18.9.1999 and the summoning order dated 1.6.2002 mainly on the ground that sanction to prosecute him for this complaint is essential under law

and that having not been done, his prosecution cannot be continued.

The facts, in brief, are that the petitioner is an employee of Haryana Police. In the year 1999, he was posted as Head Constable, Police Station, Jind. He, as such, admittedly is a public servant. On 18.9.1999, a complaint was made against the petitioner, which he claims to be false and frivolous containing wild allegations. As per the complaint, there was some dispute regarding a vacant piece of land between villagers of village Lohchab. The panchayat was convened and the matter was amicably settled. The petitioner, accompanied by a Constable, had gone to the spot on an application filed for investigation of the matter. It is alleged that the petitioner, despite the settlement of dispute, insisted the complainant to accompany him to the police station besides manhandling him and using derogatory language. Thus, respondent Wazir Singh, against whom this language was allegedly used, filed a complaint against the petitioner under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter called the "Act") and under Sections 323 and 506 IPC. After recording preliminary evidence of three witnesses, including that of the respondent, the petitioner was summoned to stand trial through an order dated 1.6.2002, Annexure P-2. The Court considering the preliminary evidence and the documents produced by the complainant and the report under Section 173 Cr.P.C. found that allegation made by the complainant under Section 3 of the Act appeared to be an attempt on his part to implicate the petitioner. Accordingly, the complaint for an offence under Section 3 of the Act was dismissed. The petitioner, however, was summoned to face trial

under Sections 323 and 506 IPC. The complaint and the summoning order are impugned on various grounds, including the one that the petitioner is a government servant and while visiting the village for investigation was acting in his official capacity in due discharge of his duties and as such can be prosecuted only after sanction, as required under the said Section.

Notice of motion was issued in this case and as an interim measure, passing of the final order was stayed. In the reply filed on behalf of the respondent, it is submitted that the act of beating and calling the respondent by caste etc. is not part of the official duty nor it can be said to be an off-shoot connecting with official duty. It is accordingly pleaded that this is a case where sanction under Section 197 Cr.P.C. would not be essential for prosecuting the petitioner. It is, thus, prayed that the present petition be dismissed.

I have heard the counsel for the parties.

There is no dispute that petitioner is a public servant and that he had gone to village Lohchab to investigate a case in his capacity as Head Constable. In this background, what is required to be seen is whether the petitioner had acted in his capacity as a public servant, for which sanction would be legally essential to prosecute him. While relying on Raj Kishor Roy v. Kamleshwar Pandey and Another, AIR 2002 Supreme Court 2861, the counsel would contend that whether the petitioner had acted in official course of duty or not and whether the sanction is necessary or not should be left open to be decided in the impugned judgment, which is to be delivered on conclusion of trial.

Learned counsel for the petitioner has referred to K.Kalimuthu v. State by D.S.P., 2005(2) RCR (Criminal) 463 to urge that Section 197 Cr.P.C. should be liberally construed in favour of a public servant as otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. Talking about the purpose of protection under Section 197 Cr.P.C., the Hon'ble Supreme Court in K.Kalimuthu's case (supra) held that this is to protect responsible public servants against the institution of possible vexatious criminal proceedings for offences alleged to have been committed by them, while they are acting or purporting to act as an public servants. The Hon'ble Supreme Court referred to observations made in Matajog Dubey Vs. H.C.Bhari, AIR 1956 SC 44 reading:-

> “The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty... there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.
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> If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to official to which applicability of Section 197 of the Code cannot be disputed.”

The Hon'ble Supreme Court also referred to State of H.P. Vs. M.P.Gupta, 2004(1) RCR (Crl.) 197, State of Orissa through Kumar Raghvendra Singh & Ors. Vs. Ganesh Chandra Jew, 2004(2) RCR (Crl.) 663 (SC) and Shri S.K.Zutshi and Anr. v. Shri Bimal Debnath and Anr. 2004(3) RCR (Crl.) 813 (SC) to highlight the said position. The Hon'ble Supreme Court also observed:-

> "....But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary."

In Abdul Wahab Ansari Vs. State of Bihar and another, (2000) 8 Supreme Court Cases 500, it was held that previous sanction of the competent authority being a precondition for the court in taking cognizance of the offence if the offence alleged to have been committed by the accused can be said to be an act in discharge of his official duty, the question touches the jurisdiction of the Magistrate in the matter of taking cognizance and, therefore, there is no requirement that an accused should wait for taking such plea till the charges are framed. In State of Orissa Through Kumar Raghvendra Singh and Ors. v. Ganesh Chandra Jew, 2004(2) RCR (Criminal) 663, the Hon'ble Supreme Court took the view that cognizance of any offence, by any court, is barred by Section 197 of

the code unless sanction is obtained from the appropriate authority in a complaint against public servant and if the offence alleged to have been committed was in discharge of official duty. The Court further observed that bar on the exercise of powers by the court to take cognizance of an offence is absolute and complete and very cognizance is barred and complaint cannot be taken notice of. In a recent decision in the case of Parkash Singh Badal and Anr. v. State of Punjab and Ors., 2007(1) RCR (Criminal) page 1, the Hon'ble Supreme Court held as under:-

> “The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a

> sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him which requires examination so much as the act, because the act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. This aspect makes it clear that the concept of Section 197 does not immediately get attracted on institution of the complaint case."

Thus, it cannot be said that when the act done by public servant is reasonably connected with the discharge of his duty and is not merely a cloak for doing the objectionable act, the protection should be available. Even if, the public servant, while doing public

duty acts in excess of his duty, but his act is reasonably connected with the performance of duty, then the excess in itself will not be sufficient ground to deprive the public servant from the protection. In Parkash Singh Badal's case (supra), it was clearly held that it is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. It was further held that the act can be performed in discharge of official duty as well as in dereliction thereof.

As per Parkash Singh Badal's case (supra), Section 197 Cr.P.C. has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty, that is under the colour of office. As noticed in this judgment, official duty implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. Its operation, as such, is limited to those duties, which are discharged in course of duty. It was also noticed that if any act or omission is found to have been committed by a public servant in discharge of his duty, then it is to be given a liberal and wide construction so far its official nature is concerned. As per Hon'ble Supreme Court, once it is established that the act or omission was done by the public servant while discharging his duty, then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. If that is not done, then the entire purpose of affording protection to a public servant without sanction may stand frustrated.

It is not disputed even by the respondent that the petitioner had come to the village to investigate the complaint lodged in regard to a dispute. The petitioner had thus visited the village in his capacity as a public servant. It is also not a matter of very serious dispute that the petitioner had required the respondent to come present in the police station for the purpose of investigation. Thus, whatever the petitioner did, it was in his capacity as a public servant. The main plank of attack by the respondent is that when the petitioner used force or abusive language, then it was not part of his duty as a public servant and thus he had exceeded the powers in discharge of his official duties. For this, as per the respondent, no sanction would be essential under Section 197(3) Cr.P.C. In view of the legal position as noticed and as emerging from the various judgments, referred to above, what is required to be seen is whether a person is alleged to have committed an act while acting or purported to act in the discharge of his official duties. It will not be subject matter of any dispute that the petitioner was acting only in discharge of his official duty. In such a case, as observed by the Hon'ble Supreme Court in the case of Parkash Singh Badal (supra), if he has acted in excess of his duty but still having a reasonable connection between the act and the performance of official duty, then the excess will not be sufficient ground to deprive him as public servant from the protection.

As noticed by the Hon'ble Supreme Court in Parkash Singh Badal's case (supra), once it is established that the act or omission was done by public servant while discharging his duty, which is the situation in the present case, then it is to be construed

to be an official so as to advance the objective of this Section in favour of the public servant. Once it has been found that the act was concededly committed by a public servant in discharge of his duty, then it is to be given liberal and wide construction so far as its official nature is concerned. It was also explained in the case of Matajog Dobey's case (supra) as to what extent act or omission performed by public servant in discharge of his duty can be deemed to be official. It can be seen that the offence allegedly committed as related to the discharge of official duty and as such requirement of sanction under Section 197 Cr.P.C. would be attracted in the present case.

Considering the totality of the facts and circumstances as emerging from the pleadings, it can be said that the petitioner had acted in his capacity as a public servant while performing public duties. Excess, though not appearing from the record, even if any committed, would not in itself be a ground to deprive the petitioner of the protection that is available to him under Section 197 Cr.P.C. The prosecution of the petitioner, which is admittedly in progress without obtaining the sanction, as such, cannot be sustained.

The petition deserves to be allowed and it is accordingly allowed. The complaint dated 18.9.1999, Annexure P-1 and the summoning order dated 1.6.2002, Annexure P-2 are quashed for want of sanction under Section 197 Cr.P.C.

February 26, 2007 (RANJIT SINGH)
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